tion Committee will report favorably a voting bill promptly.

To further the understanding of the issues, I ask that a memorandum be printed in the RECORD following my remarks. It is a preliminary memorandum prepared by the American Law Section of the Library of Congress. It outlines the highlights of the Attorney General's referee proposal, and comments on possible existing powers of the Federal courts to achieve results similar to those sought in the referee proposal. It is important that this point not be overlooked in the forthcoming debates, and it has relevance in evaluating the past performance of the Attorney General under the authority given him by the Congress in the Civil Rights Act of 1957. This memorandum will add considerably to the understanding and clarification of all of us working on these problems.

There being no objection, the memorandum was ordered to be printed in the RECORD, as follows:

FEBRUARY 4, 1960.

To: Hon. PHILIP A. HART.
From: American Law Division.
Subject: Proposed bill for appointment of voting referees and existing powers of Federal courts.

I. OPERATION OF THE ATTORNEY GENERAL'S PROPOSAL

The proposal of Attorney General Rogers for amendment of the Civil Rights Act of 1957 would operate in the following manner:

1. The Attorney General would bring an action under 42 U.S.C. 1971(c) whenever he had reason to believe that a person is about to be deprived under color of law of the right to vote in any election, Federal or State, as provided in section 1971(a), or under color of law or otherwise of the right to vote in a Federal election, as provided in section 1971(b).

2. The court may appoint one or more voting referees only if it makes both of the following findings:

(a) Under color of law or by State action a person has been deprived of a right to vote in a Federal or State election;

(b) Such deprivation is "pursuant to a pattern or practice."

3. The voting referees so appointed would have the following powers:

(a) To receive applications from any person claiming deprivation as to the right to register or otherwise qualify to vote at any election;

(b) To take evidence;

(c) To submit to the court findings as to whether any applicants are qualified to vote and (1) have been deprived of an opportunity to register or otherwise qualify to vote; or (2) have been found by State election officials unqualified to register or unqualified to vote at any election.

4. The court will review each referee's report and accept its findings unless clearly erroneous.

5. The court will issue a supplementary decree naming the persons found qualified to vote.

6. The Attorney General will transmit to appropriate State election officials copies of the original decree and any supplementary decree.

7. The court may authorize the referee to issue a voting qualification certificate to each person found qualified and named in the court's decree.

8. The court may also authorize the referees to:

(a) To attend any election and determine whether any person certified as qualified has been denied the right to vote;

(b). To attend any session for counting votes and report to the court whereby any vote cast by any person certified as qualified has not been properly counted.

9. The referees shall have all the powers of a master conferred by rule 53(c) Federal Rules of Civil Procedure.

II. THE POWERS OF THE FEDERAL COURTS UNDER EXISTING LAW

The Civil Rights Act of 1957 authorizes the Attorney General in a proper case to institute for or in the name of the United States "a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order" (42 U.S.C., sec. 1971(c)).

Though under the Federal Rules of Civil Procedure there is but one form of action, the rules do not in fact abolish the difference in substance between legal and equitable remedies (*Bradley* v. *U.S.*, 214 F. 2d 5 (5th Cir., 1954)) and equitable relief will be accorded where the record shows that the parties are entitled to equitable relief (118 F. Supp. 640 (D.C. Mo. 1953)). Since the Civil Rights Act authorizes the Attorney General to seek equitable remedies in a civil action the court entertaining such an action may exercise any of the traditional equity powers unless limited by statute or rule.

Courts of equity are flexible and can adapt their decrees to all the varieties of circumstances which may arise, and adjust them to all the peculiar rights of the parties in interest (*Alexander* v. *Hillman*, 296 U.S. 222, 239 (1935)) citing Story (Equity Jurisprudence (14th Ed.) sec. 28; *Brown* v. *Board of Education*, 349 U.S. 294, 300 (1955)).

Story also points out in section 28 that, unlike courts of law which must limit their inquiries to the parties before them even though others may be vitally interested in the outcome of the suit, courts of equity can bring before them all the parties interested in the subject matter, and adjust the rights of all, however numerous. That Story's observation is still valid is borne out by rule 71 of the Federal Rules of Civil Procedure which provides:

"When an order is made in favor of a person who is not a party to the action, he may enforce obedience to the order by the same process as if he were a party; and, when obedience to an order may be lawfully enforced against a person who is not a party, he is liable to the same process for enforcing obedience to the order as if he were a party."

When the Attorney General brings an action under section 1971(c) against State registration or voting officials, the individuals whose voting rights have been infringed are not parties to the action, and indeed all whose rights have been infringed may not be known. With respect to those who are known, one of the necessary duties of the court is to determine whether they are actually qualified to register and to vote under the provisions of the applicable State laws. If the court finds that they are, there can be no doubt that an order to the appropriate State officers to permit them to register or to vote would be a proper one. A court of equity is not limited to the restraint of threatened action, but may require affirmative action where the circumstances demand it (*Ex parte Lennon*, 166 U.S. 548 (1897)).

Since the Civil Rights Act authorizes the Attorney General to seek not only a permanent or temporary injunction or restraining order but also an "other order" it might be quite proper for the Attorney General to seek an order retaining the case on the docket with the right to seek additional relief if deprivation of voting rights continues (*Hecht Co.* v. *Bowles*, 321 U.S. 321, 329 (1944)). Moreover, with regard to school segregation matters the Supreme Court has directed the lower courts to retain jurisdiction of the cases in order that they may consider the many problems which enter into the establishment of a system of determining admission to public schools on a nonracial basis (*Brown* v. *Board of Education*, 349 U.S. 294, 300-01 (1955)).

Whether the courts may use referees to assist them in determining the qualifications of voters depends on the operation of rule 53(b) of the Federal Rules of Civil Procedure which provides that in actions to be tried without a jury, "except in matters of account, a reference shall be made only upon a showing that some exceptional condition requires it."

An order of reference is reviewable and neither congestion of the calendar in itself, nor complexity of issues of fact and law, nor the prospect of a lengthy trial, offer exceptional grounds for reference to a master (*La Buy* v. *Howes Leather Co.*, 352 U.S. 249 (1957)).

But where numerous persons were to be examined at various places in proceedings supplementary to execution, reference to a master was proper (*Bair* v. *Bank of America* 112 F. 2d 247 (1940)). Perhaps a finding by the court that the deprivation of voting rights was "pursuant to a pattern or practice" might constitute "some exceptional condition" within the meaning of rule 53(b).

If appointment of a master or referee is justified under 53(b), 53(e)(2) provides that in actions to be tried without a jury the court shall accept the master's findings of fact unless clearly erroneous.

CONCLUSIONS

While it seems likely that the District of Courts already have the powers to carry out many of the objectives of the proposal for voting referees, statutory authorization for their appointment upon a finding of a practice or pattern of deprivation of rights would remove any doubt about the propriety of reference under rule 53(b).

There is another part of the Attorney General's proposal which would remove another doubt about the scope of the act of 1957. This is the proposal to authorize in specific terms a proceeding against the State as a party defendant under some circumstances. On the other hand, the Supreme Court will be considered in the present term the question whether the 1957 act already authorizes the Attorney General to proceed against a State (*U.S.* v. *Alabama*, Docket No. 398 Oct. Term 1959; 267 F. 2d 808 (5th Cir. 1959)).

If the Court finds that a State is a proper party defendant, the Attorney General's proposal would have the effect of limiting the scope of the present law by permitting an action against the State only when a State official has resigned or been relieved of his office without assumption of the office by a successor.

THE 1960 CRUSADE FOR FREEDOM DRIVE OF RADIO FREE EUROPE

Mr. CURTIS. Mr. President, the Senator from Nebraska [Mr. HRUSKA] is the honorary State chairman of the 1960 Crusade for Freedom Drive in support of Radio Free Europe. He spoke at a kick-off luncheon for the drive held in Lincoln, Nebr., on February 8. Representatives of the county organizations were present, and the affair received widespread attention by the press and radio TV.

The importance of the work of Radio Free Europe in combating communism was stressed by Senator HRUSKA. Through supplying reliable news and information to Poland, Czechoslovakia, Hungary, Bulgaria, and Roumania, Radio Free Europe exposes Communist